



Illinois Department of Natural Resources

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Pat Quinn, Governor
Marc Miller, Director

LAND RECLAMATION DIVISION

Memorandum No. 2011-01

To: All Coal Mine Operators/Consultants

Date: February 14, 2011

From: Scott K. Fowler, Supervisor
Land Reclamation Division

Re: Uncontrolled Properties in Permit Applications

Historically, except for certain rare instances, applicants have been required to document that they possessed the right to enter and begin surface coal mining and reclamation operations in the proposed permit area prior to permit issuance. While the intent of this policy was to prevent uncontrolled lands from being permitted without the landowner's knowledge, the unfortunate result has been that lands for which the applicant is negotiating lease or purchase with the landowner could not be included in the permit because the transaction had not been finalized. Thus, if lease or purchase occurred, the permittee was required to apply for an additional permit for the newly acquired area, resulting in the expenditure of already limited Department staff time to review an application for an area that could have easily been reviewed as part of the original permit.

The regulations at 62 Ill. Adm. Code 1778.15(a) states that "An application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface coal mining and reclamation operations in the permit area..." In addition, Section 1773.17(b) states that "The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the Department otherwise directs in the permit."

Taking these two rules together the Department has concluded that prior to issuance the Department must determine if an application contains "a description of the documents upon which the applicant bases his or her legal right to enter and begin surface coal mining and

reclamation operations in the permit area,” but that the Department may “[direct] in the permit” that any areas for which the right to enter is not demonstrated [uncontrolled properties] cannot be affected until such right is demonstrated. In other words, a permit can be issued containing uncontrolled properties, but the Department can condition the permit to preclude any mining related disturbance on the uncontrolled properties until the right to enter and begin surface coal mining and reclamation operations is demonstrated.

In implementing the above policy, the following procedure will be observed:

- When an application is submitted for completeness review, it shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface coal mining and reclamation operations. Any areas in the application for which the applicant does not possess the right of entry shall be identified and a notarized, written statement from the landowner of the uncontrolled property granting permission to include the property in the application shall be included. The waiver must clarify that the owner had the right to deny inclusion of the property in the application and knowingly waived that right and that in no way will the issuance of a conditioned permit authorize access to the subject property if the permittee and landowner do not come to agreement. The uncontrolled property may not exceed one third of the total permit area.
- Prior to permit issuance the applicant shall provide the Department with updated information concerning the status of properties shown as uncontrolled in the application. If all properties are now controlled, the permit will be issued for all areas the application.
- If any properties remain uncontrolled at the time of permit issuance, the permit issuance shall be conditioned to prohibit all surface coal mining and reclamation operations on those areas still uncontrolled until such right is demonstrated. The condition shall also require that any modification to the operations or reclamation plans resulting from the inability to affect the uncontrolled properties shall be approved by permit revision prior to such changes being implemented.